

REMARKS

In the non-final Office Action mailed on November 30, 2006, claims 1-35 were pending. Claims 20-26 were withdrawn as being directed to a non-elected invention. Claims 7, 20-26 and 33 have been cancelled in this response. Claims 1, 8, 19, 27, and 34 have been amended. Reconsideration of the present application as amended and including claims 1-6, 8-19, 27-32 and 34-35 is respectfully requested.

Claim 8 was rejected for depending from claim 7 since there was no claim 7 filed with the application. In the amendments above, claim 7 is indicated as being cancelled, and claim 8 has been amended to depend from claim 5. Withdrawal of the rejection of claim 8 is respectfully requested.

Claim 19 was rejected under 35 USC §101 because the claim was considered to be drawn to non-statutory subject matter since it was asserted to positively recite part of the human anatomy. Claim 19 has been amended to clarify that the human anatomy is not part of the claim but rather that the first and second widths are oriented relative to the central axis of the spinal column when the device is in an operative position so that the widths may be compared to one another. Accordingly, withdrawal of this basis of the rejection of claim 19 is respectfully requested.

Claims 1-6, 8-19 and 27-35 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,484,437 to Michelson. Claims 1 and 27 have been amended. Support for the amendments may be found, for example, at page 29, lines 8-10 and in the associated figures. Entry of the amended claims is respectfully requested.

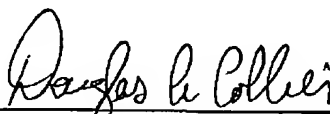
Amended claim 1 recites, among other features, "a guide sleeve housing including a proximal portion and a distal portion, said proximal portion including an inner wall defining a proximal chamber, said housing further including a first working channel port and a second working channel port extending through said distal portion in communication with one another and in communication with said proximal chamber, wherein said first and second working channel ports together form a substantially oval cross-sectional shape...." These features are not believed to be disclosed in the cited references, and claims 1-6 and 8-19 are believed to be allowable. Withdrawal of this basis of the rejection of these claims is respectfully requested.

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Amended claim 27 recites "a shaft; an engaging portion at a distal end of said shaft releasably engageable with a member positioned about said engaging portion, wherein said member is a guide sleeve housing defining first and second access ports therethrough for accessing a spinal disc space with said engaging portion removed therefrom, said access ports being in communication with one another and together defining a substantially oval cross-sectional shape through said guide sleeve housing; and a distractor tip extending distally of said engaging portion, wherein said engaging portion includes an enlarged configuration relative to said shaft and said distractor tip." This combination of features is not believed to be disclosed in the cited references, and claims 27-32 and 34-35 are believed to be allowable. Withdrawal of this basis of the rejection of these claims is respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance with pending claims 1-6, 8-19, 27-32 and 34-35. Reconsideration of the present application as amended is respectfully requested. Timely action towards a Notice of Allowance is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the present application.

Respectfully submitted,



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